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**IN THE  
COURT OF APPEALS OF INDIANA**

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BENJAMIN DOSSEY,	)	
	)	
Appellant,	)	
	)	
vs.	)	No. 20A03-0607-CV-311
	)	
HEATHER DOSSEY,	)	
	)	
Appellee.	)	

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APPEAL FROM THE ELKHART SUPERIOR COURT  
The Honorable Stephen Platt, Judge  
Cause No. 20D02-0509-DR-621

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**February 28, 2007**

**MEMORANDUM DECISION – NOT FOR PUBLICATION**

**MATHIAS, Judge**

Appellant-respondent Benjamin Dossey (“Husband”) appeals, pro se, from the Elkhart Superior Court’s order denying his motion for modification of child support order. Concluding that this court does not have subject matter jurisdiction due to Husband’s failure to timely file his notice of appeal, we dismiss.

### **Facts and Procedural History**

Appellee-petitioner Heather Dossey (“Wife”) filed a petition for dissolution of marriage on September 19, 2005. The trial court issued its decree of dissolution on April 10, 2006. On June 8, 2006, Husband filed a motion for modification of child support order, which was denied on the same day. On July 14, 2006, Husband filed a notice of appeal which stated that “Denial and Final Judgement [sic] of his Motion for Modification of Child Support [was] on June 16, 2006.” Appellee’s App. p. 34. On August 3, 2006, the trial court clerk made the following entry on the chronological case summary (“CCS”): “Court having reviewed the record now notes that there was no hearing on 6-16-06 and as such there is nothing to appeal.” Id. at 5. A second entry on the CCS on August 3, 2006, further stated that: “CLERK NOTES THAT HUSB [sic] FILED NOTICE OF APPEAL ON 7-14-2006 REFERENCING A JUDGMENT ENTERED ON 6-16-2006. CLERK FURTHER NOTES ACCORDING TO THE CCS NO JUDGMENT EXISTS FOR THAT DATE. CLERK DECLINES TO PROCESS HUSBANDS NOTICE OF APPEAL AT THIS TIME.” Id.

On August 11, 2006, Husband filed an amended notice of appeal from trial court referencing the June 8, 2006 order. This appeal ensued.

## Discussion and Decision

The trial court issued its final judgment denying Husband's Motion for Modifying Support Order on June 8, 2006; however, Husband did not file his Notice of Appeal until July 14, 2006, thirty-six days later. Thus, Husband failed to timely file his Notice of appeal pursuant to Indiana Appellate Rule 9(A) (2007), which provides in relevant part:

(1) *Appeals from Final Judgments.* A party initiates an appeal by filing a Notice of Appeal with the trial court clerk within thirty (30) days after the entry of Final Judgment.

\* \* \*

(5) *Forfeiture of Appeal.* Unless the Notice of Appeal is timely filed, the right to appeal shall be forfeited . . . .

Wife correctly points out that the "timely filing of a notice of appeal is a jurisdictional prerequisite." Br. of Appellee at 4; see also Becker v. State, 719 N.E.2d 858, 860 (Ind. Ct. App. 1999). Moreover, as this court has previously held, this rule is mandatory. Kelsey v. Nagy, 410 N.E.2d 1333, 1334 (Ind. Ct. App. 1980); see also Cavazzi v. Cavazzi, 597 N.E.2d 1289, 1292 (Ind. Ct. App. 1992) (stating that "our supreme court has held that it is bound by its own rules" . . . and further holding that "we are not at liberty, however, to waive compliance with our rules that determine whether we may entertain the appeal in the first place . . . ."). Failure to timely file a praecipe results in dismissal of the appeal because it is a jurisdictional failure. Neville v. State, 694 N.E.2d 296, 297 (Ind. Ct. App. 1998). Accordingly, we dismiss Husband's appeal for lack of subject-matter jurisdiction.

Dismissed.

NAJAM, J., and MAY, J., concur.